

1 statewide on, on what you do with these
2 facilities that are not POTWs and I think some
3 thought needs to be put to that. I do think you
4 have some discretion on the MMPs, on the
5 enforcement policy that is aligned with that,
6 because, if I'm correct, the enforcement policy
7 does not address MMPs as they relate to these
8 types of facilities, and so, I'd like to see how
9 that's touched upon by legal counsel and the
10 Board, as well. You're going to hear in our
11 presentation about a number of things, but one
12 thing you're going to hear about is
13 inconsistency. I'll stop there, and I'd like to
14 turn it over to Ms. Chen now for the
15 presentation.
16

17 MR. WRIGHT: Ms. Chen?

18 MS. PATRICIA CHEN: Thank you. My name is
19 Patricia Chen. I'm with Miles Chen Law Group,
20 and I represent South Coast Water District and
21 SOCWA, in connection with the pre--the ACL at
22 issue.

23 MS. WRIGHT: And, and you've taken the oath?

24 MS. CHEN: And I've taken the oath, yes.

25 MR. WRIGHT: Thank you. By way of

1 background, South Coast Water District has
2 12,500 water accounts and serves a population of
3 about 40,000 residents. South Coast Water
4 District imports approximately 7,500 acre feet
5 of, of potable water annually. The GRF produces
6 10% of South Coast Water District's supply. The
7 Groundwater Recovery Facility at issue cost
8 approximately \$5.8 million to construct, and it
9 treats low quality or brackish groundwater
10 extracted from the San Juan Valley Groundwater
11 Basin. The GRF water treatment process consists
12 of reverse osmosis treatment, and then, iron and
13 manganese removal. To give you an idea of the
14 timeline of what occurred in this case from 2001
15 to 2002; the design of the GRF was initiated,
16 based on the NPDES permit in place at the time,
17 which allowed for compliance to be determined at
18 the outfall. In 2005, the construction of the
19 GRF commenced. August of 2006, the NPDES permit
20 was amended, and at that point, compliance was
21 to be determined at the GRF. In June, 2007, the
22 GRF began its startup operations, and during
23 this time, the plant operated sporadically as
24 adjustments were being made to the operations.
25

1 South Coast was aware of exceedances of the
2 permit, but it was unclear as to whether it was
3 an operational issue or a sampling issue until
4 December of 2007, when it began working on a
5 solution. In March of 2008, the GRF began 24--
6 or full time operations, and then, in May of
7 2008, South Coast developed a remedy. June,
8 2008, the original ACL in this case was issued,
9 and in July of 2008, the South Coast Water
10 District Board approved the remedy, and in
11 November of 2008, the implemat--implementation
12 of the remedy was complete. The 2006 NPDES
13 permit, again i--incorporated a change in the
14 sampling location, and this change was due to
15 concern with POTWs. As EPA articulated, and
16 this is in a letter from EPA in attachment D of
17 our evidentiary submittal, EPA stated, and I
18 quote, we understand that the discharger prefers
19 the point of compliance to be determined at the
20 outfall; however, we support the Regional
21 Board's determination that compliance should be
22 determined at the individual treatment plants.
23 Secondary treatment is a technology based
24 standard, and should be met after the treatment
25

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1 process. According to the Clean Water Act, all
2 POTWs must meet effluent limitations for a
3 secondary treatment. Clearly, again, the
4 concern was with POTWs and there is no mention
5 of any type of Groundwater Recovery Facility.
6 The change in the sampling location resulted in
7 the GRF exceedances of the permit limits. The
8 recycled water policy that was adopted by the
9 State Board on February 3rd of 2009 really
10 provides a backdrop to the construction and
11 operation of the GRF. As the State Board
12 articulated, quote, California is facing an
13 unprecedented water crisis, and the Board
14 strongly encourages local and regional water
15 agencies to move towards clean, abundant, local
16 water for California by emphasizing appropriate
17 water recycling and water conservation and
18 maintenance of supply infrastructure and the use
19 of storm water. Consistent with this policy,
20 MWD has voiced its support of the GRF, and I, I
21 have provided s--for your reference, a copy of
22 this, this letter that was sent to the Regional
23 Board. In the letter, MWD points out that the
24 Governor has declared a statewide drought and
25

ordered the Department of Water Resources to coordinate with state and federal agencies to identify risks to water supply. MWD further states maintain operation of the GRF is of great value to Southern California, and would help the region content with water supply shortage conditions. Also, because of the GRF's small contribution to the outfall flow, we suggest the Regional Board consider its impact to the ocean, when mixed with other discharges from wastewater treatment plants. As MWD recognized, the discharge of the GRF brine does not signify--significantly impact the outfall. In fact, the GRF contributed only 1.1 milligrams per liter of total suspended solids to the outfall of the 11.5 milligrams per liter, liter total monthly average. Contrast this to the previously permitted average of 30 milligrams per liter. Here's the comparison on a graph. As you can see, the comparison of the average TSS in milligrams per liter with and without the GRF at the outfall is well below the 30 milligrams per liter prior permit limit. To give some perspective on these numbers if--in--

1 and this is in pounds per day, the GRF is
2 contributing 289 pounds per day, as compared to
3 the 1,580 from San--from the San Juan Creek
4 Ocean Outfall, and if you compare this to the
5 City of San Diego, the Point Loma Outfall, we're
6 looking at 45,822 pounds per day. As you know,
7 the City of San Diego is operating under a 301H
8 waiver. To avoid further violations of its
9 NPDES permit, South Coast has installed a
10 holding tank and diverted the brine flow to the
11 JB Latham treatment plant at a cost of 225,000.
12 And, again, this was implemented by November of
13 2008. But this is not a long term solution.
14 There's a serious impact of brine on water
15 recycling. SOCWA is planning a 7 million gallon
16 per day tertiary treatment facility to provide
17 for a sustainable source of recycled water for
18 landscape irrigation, and the GRF brine that's
19 skewered to the plant adds an additional 200
20 milligrams per liter of TDS to the effluent. If
21 South Coast goes forward with its plans to drill
22 a second well, that number would double, and the
23 TDS will certainly affect the quality of the
24 recycled water produced by the planned facility.
25

1 We believe that South Coast is not being treated
2 equitably, equitably, given the fact that other
3 facilities which have brine effluent are allowed
4 to dich--discharge to outfalls. For example,
5 Oceanside, the Brackish Groundwater - - Facility
6 disposes brine to the Oceanside Ocean Outfall.
7 Also, Monterrey Regional Water Pollution Control
8 Agency runs a treatment plant, whereby secondary
9 treated wastewater and brine waste is discharged
10 to Monterrey Bay. Interestingly, the sampling
11 of brine at this facility is conducted solely to
12 determine how much of the blended secondary
13 effluent is needed, so that the discharges stay
14 within the permit conditions. We believe that
15 this type of blending at the outfall is
16 appropriate here, particularly because the GRF
17 is simply discharging the natural constituents
18 in the groundwater. Given all the policy
19 considerations, we believe that a MMP should not
20 apply. The GRF is the very sort of project that
21 will help the region contend with the statewide
22 drought conditions, as declared by the Governor.
23 It's also the type of project that the State
24 Board encourages in its newly adopted recycled
25

1 water policy. Application of MMPs would
2 discourage--certainly discourage these types of
3 projects, particularly in poor quality basins.
4

5 The change in compliance point at the GRF was
6 based primarily on concerns that POTWs need
7 effluent limits at the point of discharge from
8 each plant. Language of the statute refers to
9 industrial dischargers and POTWs. We strong--we
10 firmly believe that MMPs were never intended to
11 apply to groundwater recovery and water
12 recycling facilities. The difference between
13 the GRF and a POTW is that a GRF simply does not
14 treat any wastewater. It extracts local
15 groundwater and filters and treats the water for
16 potable use. The GRF is also distinguishable
17 from your run of the mill industrial discharger
18 because most industrial dischargers generate
19 contaminated effluent, as a result of industrial
20 processes. In contrast, the GRF's brine
21 effluent, effluent is simply a concentrated form
22 of the natural constituents in groundwater. In
23 other words, it's essentially dirt. In lieu of
24 the MMPs, we believe that Water Code, Section
25 13385E factors should apply, and these factors

1 include, for example, the nature of
2 circumstances, extent, and gravity of the
3 violation or violations, whether the discharge
4 is susceptible to cleanup or abatement, degree
5 of toxicity of the discharge. If you apply
6 these factors you see that the poor brackish
7 water quality led to really no significant harm
8 at the outfall. Also, the, the discharge has
9 already been abated, and the degree of toxicity
10 of the discharge is none. The non--the brine
11 discharge is non-toxic, and, again, it's
12 essentially dirt. Without the GRF, this
13 groundwater would have likely flowed to the
14 ocean an--anyway. If the Board finds that it's
15 required to apply MMPs, we would assert that
16 they ought to be reduced. The amount of MMPs is
17 unreasonable and oppressive, in our view.
18 According to S--Supre--California Supreme Court
19 Case, Hale versus Morgan, and the penalty may be
20 violative of SOCWA and South Coast Water
21 District's due process rights. Uniformly,
22 courts have looked with disfavor on ever
23 mounting penalties and have narrowly construed
24 statutes which either require them or permit
25

1
2 delta and exacerbate California's water shortage
3 problem. Note that we've already asked for a
4 permit amendment and have been told by staff
5 that it will be denied, thus, we have no viable
6 options here, and, and this is why we're before
7 the Board. We urge the Board to give serious
8 consideration to these policy issues we've
9 raised and exercise your discretion to reduce
10 the penalty against SOCWA and South Coast.
11 Thank you.

12 MR. WRIGHT: Thank you. Mr. Dunbar?

13 MR. MICHAEL DUNBAR: Okay. Thank you. Good
14 morning. I'm Mike Dunbar, the Manager of South
15 Coast Water District, and I'm just going to
16 provide just a couple of closing remarks and,
17 and summaries. As you heard earlier from
18 Poseidon we took our district took the
19 Governor's issue of providing local resources to
20 heart. We didn't have to do this. We could
21 continue to import water from the delta,
22 continue to import water from the Colorado River
23 but we went ahead. We looked at this space,
24 and, and this is very poor quality water. I
25 mean, this is--this is water that's right, right

1 on the edge. Our groundwater well is within,
2 oh, approximately three quarters of a mile from
3 the ocean. It--believe me, it would have been
4 very easy for us to not do anything at all, and
5 continue to import water. This groundwater
6 plant is costing us the equivalent of \$1,600.00
7 an acre foot, when we could buy water from --
8 for \$700.00 an acre foot, so this is not a money
9 saver for us. The other thing and the EPA
10 letter when I received a copy of that EPA letter
11 and I read it, I though, you know, they're
12 referring to publically owned treatment works,
13 wastewater treatment plants. They want to deal
14 with wastewater solids and we totally support
15 the Regional Board's staff in having each one of
16 the treatment plants meet those effluent
17 limitations for wastewater plants, for
18 wastewater solids. We are not a wastewater
19 discharger, as Ms. Chen pointed out. I mean,
20 we're basically discharging iron and manganese.
21 I mean, it's basically dirt. I mean, that dirt
22 comes from the basin, and that dirt would go out
23 to the ocean. I mean its iron and manganese.
24 It's naturally found occurring, so these are not

1 wastewater solids. and just, just as kind of a
2 little closing just to kind of give you a
3 visual she put up the slide that showed that
4 our discharge is about 200 and I think 80 pounds
5 per day, versus the City of San Diego's
6 46,000, roughly, pounds per day. As a visual
7 that 46,000 pounds a day is about the equivalent
8 of eight large elephants. That Hun--that 289
9 pounds that we discharge is the equivalent of
10 two small men, so keep that visual in mind.
11 That's every single day, wastewater solids are
12 being discharged into the ocean from the City of
13 San Diego, and we're discharging basically dirt.
14 So thank you and we'll be here to answer any
15 questions.
16

17 MR. WRIGHT: Okay. Let's see. Ms. Okamoto,
18 are you ready to hold fourth?

19 [Long pause]

20 MS. MYUMI OKAMOTO: Good morning, Chair
21 Wright, I guess, almost afternoon, and Board
22 Members. My name is Myumi Okamoto, and I am an
23 attorney with the Office of Enforcement at the
24 State Water Resources Control Board and I'm
25 representing the prosecution staff on this

1 particular ACL complaint R9-2009-0028 against
2 SOCWA and the South Coast Water District for an
3 administrator's--administrative civil liability
4 complaint for mandatory minimum penalties, or
5 MMPs, in the amount of \$204,000. So far, today,
6 you've heard SOCWA's arguments, as to why it
7 believes that MMPs can and should be exempted or
8 reduced in this particular situation, and we
9 briefly laid out our responses in supporting
10 document number seven but I'd like to briefly
11 just expand on some of our responses now that
12 we've heard from counsel from SOCWA. First
13 off, just in response to SOCWA's argument that
14 13385E factors should apply in this particular
15 case. the consideration of 13385E factors is
16 typically done in the assessment of
17 discretionary penalties, and for purposes of
18 this hearing, we're dealing solely with the
19 imposition of mandatory minimum penalties, so
20 considerations like degree of toxicity to the
21 particular water shed or any other mitigating
22 factors that would reduce the assessment of the
23 penalty in this situation are not considered in
24 the scope of a mandatory minimum penalty
25

1
2 complaint. furthermore, SOCWA argues that MMPs
3 should not apply to groundwater recovery
4 facilities, based on certain public policy
5 considerations and I was present at the item
6 before ours regarding Poseidon and the - -
7 facility, so I can definitely appreciate the
8 need for use of recycled water in this region,
9 and, however, notwithstanding the State Board's
10 recycled water policy, we still are constrained
11 by the existing statutory scheme regarding man-
12 -the imposition of mandatory minimum penalties,
13 so I just want to reiterate that the prosecution
14 staff initially issued this ACL complaint in
15 response to a very narrow and discrete set of
16 NPDES effluent limitation violations, which are
17 covered by Section 13385, Subdivision H and I,
18 and violations of these sections trigger the
19 imposition of mandatory minimum penalties,
20 unless a exemption to that imposition under
21 Subdivision J applies. So this point goes to
22 SOCWA's first argument against the imposition of
23 MMPs; and they argue that MMPs should not apply
24 to the GRF, given certain public policy
25 considerations. However, as you know, the MMPs

1
2 apply, based on specific violations of the NPDES
3 permit, so when the legislature initially
4 created Section 13385 H and I, their--they did
5 not differentiate between the types of
6 facilities being regulated by the NPDES permits.
7 Rather, the broader concern was implementing a
8 piece of legislation that would ensure that
9 discharges from NPDES permitted facilities
10 complied with effluent limitations and waste
11 discharge requirements. So for purposes of
12 initially assessing MMPs against the discharger,
13 there is no differentiation between a facility
14 that, let's say, treats industrial wastewater,
15 versus a purveyor of potable water. Rather, the
16 purpose--for purposes of assessing MMPs, the
17 underlying commonality between NPDES facilities
18 that treat industrial wastewater and public
19 purveyors of potable water is the fact that the
20 discharges from both are regulated and subject
21 to NPDES effluent limitation requirements, and
22 that specified violations of those permits
23 necessitate the imposition of MMPs. And this
24 point goes to dr--address Mr. Rosales' comment,
25 as to why the enforcement policy may appear

1 of that bill indicates that this exemption was
2 narrowly drafted to address waste--wastewater
3 treatment processes and microbiological
4 systems. So because this exemption is specific
5 to violations during the startup and adjusting
6 process of a wastewater treatment unit, the
7 imposition of MMPs to SOCWA still applies.
8 However, even if this provision was - -
9 sufficiently analogous to the GRF in our
10 current situation, the requirements under this
11 subdivision have not been sufficiently met by
12 the discharger. Thirdly, SOCWA further argues
13 that it should have had the opportunity to enter
14 into a time schedule order. And SOCWA argues
15 that, quote, neither the statute, nor the policy
16 concerning time schedule orders prohibits the
17 compliance schedule to be retroactive. And I
18 must content that this argument is contrary to
19 the plain reading of the statute. Under Section
20 13385, Subdivision J3, MMPs will not apply where
21 the waste discharge is in compliance with either
22 a cease and desist order or a time schedule
23 order, if certain requirements under that
24 Subdivision are met. There is no legal support
25

1
2 for interpreting Section 13385 J3's exemption
3 from MMPs as being allowed to have a retroactive
4 application allowing an exemption an exemption
5 to the violations that occurred prior the
6 adoption of a time schedule order. A plain
7 reading of the statute stating that MMPs will
8 not apply to, quote, a violation of an effluent
9 limitation where the discharge is in compliance
10 with a time schedule order, necessarily means
11 that a waste discharge cannot be in compliance
12 with a TSO until that TSO has been either
13 adopted by the Board, or issued by the Executive
14 Officer, through his delegated authority.
15 Furthermore, as we stated in supporting document
16 number seven, at the time the TSO process was
17 discussed by SOCWA with the--with the Regional
18 Board staff around September of 2008, 56 of the
19 68 violations and already occurred, and 12
20 additional violations occurred about four weeks
21 after that, so I bring this up because the
22 timeline for a TSO issuance by the Executive
23 Officer or adoption by the Board is important
24 because there is a statutory notification
25 requirement under S--Section 13167.5 and a

1 tentative time schedule order is subject to a
2 30 day public comment period, prior to adoption
3 by the Board. So given the dates in which the
4 violations occurred, and adding on top of that,
5 the required 30 day notice period the TSO
6 cannot have feasibly been adopted before the
7 discharges subject to the MMPs occurred. And,
8 finally, SOCWA argues that imposing MMPs in this
9 case raises certain due process considerations.
10 and they argue that the assessment of
11 statutorily required MMPs are unreasonable and
12 violative of due process and they cite this
13 California Supreme Court case, Hale versus
14 Morgan and this case is often cited as an
15 illustrative example of a penalty that's been
16 held constitutionally excessive by the
17 California Supreme Court. And the particular
18 section that was at issue in Hale was a
19 mandatory penalty section of former Civil Code,
20 Section 789.3 and the Court made their—
21 determination that the mandatory penalties were
22 constitution--constitutionally excessive, based
23 on a very fact specific determination. In Hale,
24 the mandatory penalty was accumulated on a per
25

1 day basis, rather than on a per violation basis,
2 and the Court was concerned that the mandatory
3 nature of the penalty and the accumulation of
4 the penalty could result for a unlimited
5 duration. So there is a factual distinction
6 between the factual background in Hale, and
7 then, the current s--the current case we have
8 before us. This mandatory minimum penalty
9 section of 13385 is a per violation statute,
10 when we're talking about effluent limitation
11 violations, under Subdivisions H and I. So
12 there are some factual differences, and the
13 Court, in Hale, did state that it could envision
14 some situations where the penalty would be
15 necessary for deterrent purposes. So, in
16 conclusion, the prosecution staff requests that
17 the Regional Board find the MMPs for effluent
18 limitations apply, that they find that the
19 violations are not subject to an exemption,
20 under Subdivision J, and that we recommend the
21 adoption of the Revised Tentative ACL Order
22 referenced as supporting document number six.
23 And I'm available to answer any additional
24 questions. Thank you.
25

1
2 MR. WRIGHT: Any questions at this time?
3 Yes? Go ahead, George.

4 MR. GEORGE LOVELAND: First of all, was, at
5 any time, the discharge from the ocean outfall
6 in violation, or was it merely the discharge
7 from GRF?

8 MR. HAAS: The violations in the Tentative
9 Order all come from discharges from the
10 Groundwater Recovery Facility.

11 MR. LOVELAND: All right, but my question
12 is--

13 MR. HAAS: [Interposing] Yes.

14 MR. LOVELAND: --did that result in a
15 violation of the outfall?

16 MR. HAAS: I did not correlate those with
17 the outfall monitoring. You may remember just
18 a couple of months ago the Board adopted
19 another mandatory minimum penalty order against
20 SOCWA for it was a combined of, I think, five
21 complaints, four of which were for the—
22 individual treatment facilities other than the
23 Groundwater Recovery Facility, and one complaint
24 was for violations of the outfall's effluent
25 limitations, but I don't know the correlation

1
2 between today's violations and the ones that
3 were subject to the previous.

4 MR. LOVELAND: And I guess I'd ask SOCWA,
5 then, do you know, or have any idea?

6 MR. BRENDAN FLAYHIVE: Excuse me Board, my
7 name is Brendan Flayhive [phonetic], and the--

8 MR. WRIGHT: [Interposing] what's your name,
9 again?

10 MR. FLAYHIVE: --Brendan Flayhive, and I'm
11 with the--

12 MR. WRIGHT: [Interposing] Have you taken
13 the oath and you, you have?

14 MR. FLAYHIVE: No, I have not.

15 MR. WRIGHT: Well, you should. Let me go
16 back so I can read this. So do you swear the
17 testimony you're about to give is the truth, and
18 if so, answer I do.

19 MR. FLAYHIVE: I do.

20 MR. WRIGHT: And, also, would you fill out a
21 speaker slip when you finish?

22 MR. FLAYHIVE: All right. In terms of these
23 suspended solids violations, which these--all
24 the violations that are accrued from GRF were
25 suspended solids violations. We have never had

1
2 a, a cumulative effect from those suspended
3 solids violations, turbidity violations, and
4 settle-able solids violations that would have
5 caused the outflow to have also violated the
6 previous limitations for the outfall, or the
7 outfall limits.

8 MR. LOVELAND: So you--so your answer would
9 be you did not--the outfall did not violate--

10 MR. FLAYHIVE: [Interposing] The GRF didn't
11 contribute to an outfall what would have been a
12 traditional outfall violation for suspended
13 solids, turbidity, or settle-able solids.

14 MR. LOVELAND: Okay. And my, my other
15 question would be I guess for legal staff.
16 Reviewing the argument that essentially, we
17 have no options, this is mandatory and statutory
18 constraints so why are we here, Miss?

19 MR. WRIGHT: Ms. Hagan?

20 MS. HAGAN: well, you're, you're essentially
21 correct. If the allegations--if you find that
22 the violations occurred, and the violations are
23 of the, the type that are subject to mandatory
24 minimum penalties, you do not have discretion to
25 decide not to apply the mandatory minimum

1
2 penalties, or to lower the amount of those
3 penalties.

4 MR. LOVELAND: Then I'm correct that there
5 was asserted there that SOCWA and its sub-
6 agencies did not contest the facts of these
7 violations?

8 MR. WRIGHT: Mr. Haas?

9 MR. HAAS: - - is this on? - - . Excuse
10 me. That's correct.

11 MR. LOVELAND: Okay. So, so essentially, we
12 have no discretion here, and it seems like the
13 real issue comes down to, as I heard described,
14 the policy question. Are we shooting ourselves
15 in the foot, on one hand, when we're trying to
16 accomplish two or three different things? The,
17 the desire--the capability of producing usable
18 recycled water is a very good one. The desire
19 to produce effluent that goes into the ocean and
20 that it meet certain standards is a good one.
21 If we're not violating the standard of what we
22 put in the ocean, how do we get to the point of
23 not shooting ourselves in the foot with what we
24 do with the recycled water? And it seems to me
25 like a real - - choice here, and I'm not sure

1
2 where we're going with this--with this hearing.
3 It, it, it--it's just plainly sounds to me we're
4 being put in a position and we have no choice.

5 You've got to do it, but if there is a choice
6 for this Board, it is to think about the
7 ramifications of this and talk about what in the
8 heck are we doing? Should we have been doing
9 something different than what we're doing?

10 MR. WRIGHT: Mr. King?

11 MR. DAVID KING: Just in terms of the
12 procedure here, I, I, I don't feel like I heard
13 rebuttal. I felt like I heard you case, in
14 chief with your legal arguments here, and I
15 think that we should invite Ms. Chen back to the
16 microphone for maybe five minutes or so to be
17 able to make her legal opposition to the
18 arguments about whether the violations should be
19 subject to the mandatory minimum penalties.

20 MR. WRIGHT: That was my intention to get
21 to that point but Mr. Loveland wanted to jump
22 ahead and get into policy, policy issues, which-

23 -

24 MALE VOICE 2: [Interposing] before you do
25 that, though, I do have a couple of questions

1 that were just questions.

2 MR. WRIGHT: Of?

3 MALE VOICE 2: Of Ms. Okamoto.

4 MR. WRIGHT: Yeah, that's, that's
5 appropriate, so.

6
7 MALE VOICE 2: Basically, there was a lot of
8 obvious discussion in your--in your
9 presentation concerning the Water Codes and the
10 interpretation of such, as well as legislative
11 intent. Do you have, by any chance, copies of
12 the legislative counsel's dissertation, if you
13 will, on legislative intent, number one, and
14 number two, is there any case law out there that
15 provides any guidance on interpretation of any
16 parts of these sections of the Water Code to
17 kind of help us with this because it sounds like
18 -- time, you know, there's a--there's an
19 interpretation issue here of what we can or
20 cannot do, based on the case--on the--on the
21 Code, and how it reads, and I just would like to
22 know if--what is out there.

23 MS. OKAMOTO: first of all, to answer the
24 first part of your question I do have a copy
25 with me of a legislative committee analysis for

1
2 - - 709 and 2165 which both deal with the MMP
3 statute, and also, some discussion about
4 Subdivision J, which is the exemption section,
5 and also I have committee analysis on 2351,
6 which was the section that I had mentioned in my
7 presentation about exemptions to exemptions
8 from violations regarding the startup and
9 adjusting period, so.

10 MALE VOICE 2: During, during lunch 'cause I
11 know we're going to break for lunch before we
12 finish this, I'm sure could I get copies of
13 those, so I can read them?

14 MS. OKAMOTO: I don't have a problem giving
15 copies to all the Board Members. and secondly,
16 as far as if there was ever existing case law
17 on, on interpretation of the MMP statute the
18 most significant case that I can think of on the
19 spot which I do have a copy of, also is the
20 City of Brentwood--the City Brentwood versus the
21 Central Valley Regional Water Quality Control
22 Board and this is a Court of Appeal decision
23 from the First District, and I have a copy of
24 that that I can provide to the Board Members,
25 also, at lunch.

1
2 MR. WRIGHT: Okay. Eventually, we'll hear
3 from Ms. Chen. Mr. Destache?

4 MR. GRANT DESTACHE: actually, why don't we
5 let Ms. Chen go first, and then, we'll get into
6 further discussion because I think it's a
7 broader--

8 MR. WRIGHT: [Interposing] Yeah. I, I, I
9 appreciate that. Ms. Chen and, also I, I, I
10 didn't sense that there was an interest in cross
11 examination as we've been going along in this
12 process otherwise I would have recognized
13 that, but if, if that's your desire to, to do
14 that as part of your closing statements, that
15 would be fine, but so--

16 MS. CHEN: [Interposing] Okay.

17 MR. WRIGHT: --why don't you proceed?

18 MS. CHEN: First of all, I just wanted to
19 say I also have a copy of Hale versus Morgan.
20 If we're going to copy all these cases, you
21 might as well take a look at that case, as well.
22 I want to go back to some of the comm--

23 MR. WRIGHT: [Interposing] Well--

24 MS. CHEN: --Oh, sorry.

25 MR. WRIGHT: Unless -- could I just get a

1 sense of - - my, my intention, unless I'm
2 overruled by the Board, is to finish this item
3 before we break for lunch. Now, if it's the
4 desire of, of the Board Members to start reading
5 the case law before we finish this item I need
6 to know that, but I--so, anyway, that's, that's
7 where you're - - in terms of trying to finish up
8 this item.

9
10 MR. DESTACHE: Yeah, just one quick comment,
11 and I'll ask Mr. Thompson to either concur with
12 me or, or to - - to disagree with me, but I
13 think that the--this issue, stands alone. The
14 ACL should stand alone, and I think the policy
15 issue is a further discussion item that we
16 should get into, and whether we do it today, or
17 we do it at the next meeting, I think it's
18 important because it affects the type of
19 facilities that we're really looking at here and
20 the difference between wastewater treatment
21 plants and groundwater recovery and/or any other
22 recycling type facility.

23 MR. WRIGHT: Mr. Thompson, since--

24 MR. THOMPSON: [Interposing] Well, I don't
25 have a issue with--

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MR. WRIGHT: --back to you and then, Mr.

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King - - .

4

MR. THOMPSON: I don't have an issue with

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the policy decision coming later. I agree with

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that, but I think that the documents I want to

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look at goes to the ACL issue because they raise

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the issue of interpretation, and that's the crux

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of the ACL complaint is the interpretation of

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how much penalty, if any, there should be, so

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that's why I kind of wanted to look at those

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documents. In deference to the Board Chair, I

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really want to look at the documents, whether

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it's now, instead of lu--you know, before lu--

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during lunch, that's fine. I understand what

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you want to do here, but I, I think it would be

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appropriate, at least to give a quick review of

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them, um--

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MALE VOICE 3: [Interposing] I agree with

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Mr. Thompson.

21

MR. THOMPSON: --it sounds like--

22

MALE VOICE 3: ---I'd like to review them, as

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well.

24

MR. WRIGHT: Can we get copies of those

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made as this discussion goes on? Mr. King?

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MR. KING: I, I was going to sort of argue to the contrary that, that Co--Counsel are here for both sides. To tell us what the case law that you're relying upon says, tell us what the most relevant portions of the policy are that support your arguments, and let us hear them, that's what you're the attorneys for. Tell us what, what the case law says, what does it stand for, represent the case law accurately, represent the policy accurately, and to the extent we--we've already got a copy of the policy coming, but tell us what the case law says.

MR. WRIGHT: Thank you. Ms. Chen?

MS. CHEN: Okay. I just wanted to respond to some of the points that Ms. Okamoto made one of which is she says the 13885 E factors simply don't apply because the mandatory minimum penalties apply. And I just want to make clear to you, we are suggesting and we're arguing that the 13885 factors ought to apply, in lieu of the MMPs, and the reason is, is because we believe that there is room for interpretation under the MMP statute. The, the MMP statute is silent.

1
2 It does not talk about groundwater recovery
3 facilities. All it talks about is industrial
4 dischargers and POTWs, and our argument is, is
5 that we shouldn't fall under either category for
6 the reasons I, I articulated in the
7 presentation. the Hoover Report, which was
8 issued in January of 2009, specifically
9 recommends that regional boards ought to focus
10 more on policy, rather than permits, and, and I
11 took from that that we ought to be looking more
12 at the big picture and see the forest from the
13 trees, and I think this is exactly the type of
14 case that we ought to kind of take that
15 approach. With respect to the time schedule
16 order, I just wanted to clarify that. We are
17 not saying that they should have been able to
18 adopt a time schedule order quickly and in time
19 for us to get it in place. We're saying that,
20 given that the process is so long, it makes
21 sense that there should be some process that
22 would allow you to have the, the time schedule
23 order adopted, and it be retroactive to, say,
24 for instance, that we complied as of X date.
25 That may have been two months before, but at

1
2 least the, the penalty clock should have stopped
3 at that point. That's all we care about. It's
4 not when the, the TSO is actually put in place,
5 but when the, the clock stops and it's kind of
6 an equitable issue that we're raising. With
7 respect to Hale versus Morgan Ms. Okamoto
8 tries to distinguish the facts, and I just
9 wanted to kind of point out the broader issues
10 that the, the Court was very concerned with.
11 The Court was concerned with the utter lack of
12 discretion that the Board had in that case, or
13 the decision making body had in that case, with
14 respect to the penalties. They were mandatory,
15 like in this case, and that it was specifically
16 concerned that various dischargers would be
17 treated the same, so if take that to the present
18 case, that means, you know, a NPDES permit
19 holder who's discharging raw sewage would be
20 treated the same as, as South Coast and SOCWA,
21 where we're discharging brine. So I, I think if
22 you look at the case, it certainly gives you--
23 will give you some pause for thought on some of
24 these issues, with respect to application of
25 MMPs. - - -

1

2

MR. WRIGHT: Thank you. And any questions?

3

Ms.--oh, Mr. King?

4

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MR. KING: yeah, and I apologize if I missed this in your briefing here, but I understand

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that your argument is that the \$204,000.00 of

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mandatory minimums is excessive and that, that

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it's--how much should the proper mandatory

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minimum penalty be in this instance here?

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MS. CHEN: Well, we would suggest that the penalties ou--if--okay, first of all, our first layer of argument is that we don't think MMPs should apply, and we think that the Board should exercise its discretion to apply the, the factors in 1385--885 E. To the extent the Board feels that it is under--it must apply MMPs, we think that it still has room if you narrowly construe the MMP statute and, and say that, you know, groundwater facilities ought to also be given a break for their startup period. We didn't start operating full time until March 5th of 2008, so we would suggest that the MMPs begin on March 5th, and then, end when the Board approved the remedy for the diversion of the brine to the sewer. That would be our--

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MR. KING: [Interposing] Ha--have you run those numbers that would--

MS. CHEN: [Interposing] you know what? I, I have, and I apologize, I don't have them handy right now. I, I can get them during the break.

MR. KING: If--yeah, if anybody could get those numbers.

MR. WRIGHT: we're not taking a break.

MS. CHEN: Oh, okay. I'm sorry.

[Laughter]

MS. CHEN: Okay. Well, I'll have--

MR. WRIGHT: [Interposing] unless I'm overruled by the Members of the Board, so.

MS. CHEN: Okay.

MR. WRIGHT: But if you can get those, uh--

MS. CHEN: [Interposing] Sure.

MR. WRIGHT: --in the next few minutes.

MS. CHEN: Yeah, I'll do that right now.

MR. WRIGHT: I appreciate that. Ms. Okamoto?

MS. OKAMOTO: just, again, to I guess reiterate, the prosecution staff's original contention in our presentation is that the if, if the Board determines that these effluent

1 limitation violations did, in fact, occur, um
2 which we contend they did, as evidenced by the
3 dischargers self monitoring reports, that the
4 Board does not have discretion to opp--to assess
5 less than the mandatory minimum penalty, which
6 is statutorily defined as \$3,000.00 per
7 effluent limitation violation. and,
8 furthermore, just to respond again to Ms. Chen's
9 point about the retroactivity of time schedule
10 orders under the exemption in Subdivision J to
11 allow a retroactive application of a time
12 schedule order to some date prior to that time
13 schedule order's actual adoption by the Board is
14 contrary to a plain reading of the statute.
15 This time schedule order must be in place for
16 the exemption to apply, prospectively. It is
17 not there is no legal support to content that
18 that time schedule order can have a retroactive
19 application, as the statute says that the waste-
20 -if a waste discharge is in compliance with the
21 time schedule order, meaning that one has to be
22 in place already.

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24 MR. WRIGHT: Could, could you elaborate a
25 bit on the time schedule order notion? I don't

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know that--I don't know that we've, uh--

MS. OKAMOTO: [Interposing] Sure.

MR. WRIGHT: --and the deal with that is--

MS. OKAMOTO: [Interposing] well, I know

that--

MR. WRIGHT: --Mr. Robertus, have, have we

had--

MR. ROBERTUS: - - adopted a time schedule
order earlier in the morning.

MR. WRIGHT: Okay.

MR. ROBERTUS: Or another discharger.

MR. WRIGHT: Yeah, that's true.

MR. ROBERTUS: In a similar circumstance.

MR. WRIGHT: Yeah, that's a different--yeah.
It's a different situation, but...

MS. OKAMOTO: So just to elaborate, I guess,
a little bit about this particular procedural
mechanism either a cease and desist order or a
time schedule order under Section 13301 for a
cease and desist order, and 13300 or 13308 for
time schedule orders, and I apologize, I know
I'm throwing a lot of Code Sections around but
the Board as an exemption to allow some cover
for a discharger, if they are threatening

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1 violations of an effluent limitation or are
2 currently violating effluent limitations, the
3 Board may adopt either a cease and desist order
4 or a time schedule order to provide the
5
6 discharger some type of prospective protection
7 from that imposition of MMPs, under 13385 H and
8 I and this whole procedure is defined in
9 Subdivision J3. It talks about both cease and
10 desist orders and, also, time schedule orders,
11 and the factual findings that the Board has to
12 make, in order for this--for these two
13 mechanisms to be adopted to provide for some
14 cover for a discharger.

15 MR. WRIGHT: Okay. That helps. Ms. Chen?

16 MS. CHEN: Yeah. I have the numbers. From
17 March 5th, to July 10th, there were 24
18 violations, and that totals 72,000. If the
19 Board agrees that it's inequitable to, to get
20 South Coast and SOCWA for three violations per
21 sampling event and just so you understand, each
22 sample, we were hit with a violation for
23 instantaneous maximum average weekly, and
24 average monthly. If you believe that that--that
25 that doesn't make sense, then you would divide

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that number by three.

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MR. WRIGHT: Okay. Back to staff what do your calculations show? Have you done a similar calculation, or no?

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MR. HAAS: You know, we have not done that calculation and because it's inappropriate to do so. The effluent limitations in the NPDES order, there are I think it's weekly, monthly average, instantaneous that apply in these particular cases, as you'll see in the table, to a Tentative Order and the complaint. The NPD-- NPDES monitoring plan does not require SOCWA or Southwest Water District to take a single sample to determine compliance with a monthly or a weekly effluent limitation. Because they chose to do so, they're relying on that one event to assess compliance with all three effluent limitations. Unfortunately for them, in this case, often, that one sample exceeded all three of the effluent limitations. As a result, in the cases where they do trigger the MMPs, that one sampling event, because it exceeded--it's used to determine compliance with three different effluent limitations and three

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different effluent limitations were violated,
three different mandatory minimum penalties must
apply.

MR. WRIGHT: Okay. Mr. King?

MR. KING: And, and why would we be wrong if
we limited the scope from March 5th, to, to July
10th?

MR. HAAS: Well, I'm not sure that the
statute for the MMP exemption under 13385 J3
permits us to do that. As, as Ms. Okamoto
mentioned, the exemption applies to discharger--
discharges that are in compliance with and
adopted time schedule order or a cease and
desist order at the time of the, the, the
discharge and none were in place at that time.
So the exemption--they had not met the statutory
requirements for the exemption.

MR. DESTACHE: - - Chairman Wright?

MR. WRIGHT: Yes, Mr. Destache?

MR. DESTACHE: The is there--within the
NPDES permit, is there a requirement on when
they start that testing? Is it upon initiation
of the plant, or startup of the plant, or when
is that--any effluent that comes out of the

1 plant is required to be tested?

2 MR. HAAS: I would have to refer to the
3 permit for that. I don't know that, offhand.
4 Generally, that's the way that it works. You
5 can't discharge you can't have a point source
6 discharge - - the United States, unless it's su-
7 -covered by an NPDES permit, and typically the-
8 -we - - we establish monitoring requirements on
9 all of the effluent out there. The with
10 respect to a monitoring during the startup
11 period, the monitoring is required to meet the
12 conditions of the permit, to make sure the
13 effluent limitations are being met. the startup
14 period exemption within the MMP statutes, they
15 don't make a distinction between wastewater
16 treatment plants, groundwater recovery
17 facilities, etcetera, and neither do we, but
18 they do lay out other statutory requirements to
19 meet those exemptions, and we assess whether
20 South Coast Water District or SOCWA met those
21 statutory conditions and they did not, so we
22 were unable to apply the--even the 30 day
23 startup period that could be allowed, if the if
24 the statute is met but in this case, they're

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essentially asking for a much longer startup period, which we felt was inappropriate, given the statute.

MR. WRIGHT: Okay. Mr. King? Okay. Any

other questions of Mr. Haas, Ms. Chen, Ms. Okamoto? getting back to Mr. Thompson's desire to have--do we have--did we provide information to--

MS. JULIE CHAN: [Interposing] for the record, this is Julie Chan. I gave the copies to our business support staff. They said they would bring the copies in when they were finished. I made copies for all the Board Members and for the parties.

MR. WRIGHT: That's been some time ago, uh--

MS. CHAN: [Interposing] I'll go check.

MR. WRIGHT: Okay. Would you, please?

Thank you. Mr. Robertus?

MR. ROBERTUS: This is one of the support staff items and I have not been involved with this staff action, and it's a bit awkward. I'm still trying to figure out where--at what point I can--I would come in, and my recommendation normally having been involved

1 with stuff would be curt, as it was earlier with
2 the agenda item, but I'm compelled to share some
3 thoughts because I've watched the Board struggle
4 with mandatory minimum penalties since they were
5 adopted by our legislature, and I'll preface my
6 comments by saying that the legislature took
7 that action because the presumption was the
8 Regional Boards weren't using discretion in
9 imposing penalties, so they--their intent was to
10 remove the, the discretion from the Regional
11 Boards. And that reality has been the subject
12 of discussion of WQCCs repeatedly. So with
13 spoken and I--I'd like to comment on some, some
14 things. Mr. Rosales indicated that, perhaps,
15 the Regional Board staff didn't have experience
16 in groundwater discharges with effluent
17 limitations, and I would remind the Board he
18 also said that there are three groundwater
19 facilities in the system. This Board is, in
20 fact, your staff has dealt with, with reverse
21 osmosis treatment of groundwater extraction in
22 several locations for many years. We've dealt
23 with dewatering of the convention center
24 downtown. They've had repeated MMP violations.
25

1 The utility vaults throughout the region, we've-
2 -we give them a--an NPDES permit for dewatering,
3 construction dewatering at many sites and, in
4 fact, the discharge of dewatering effluent into
5 the MS4 has given us extensive period
6 experience because they must meet surface water
7 effluent standards before they can discharge any
8 MS4. Secondly we've--the Board has discussed
9 exemptions. For example the discussion that if
10 a discharger doesn't have the money and can't
11 afford to pay the MMP, there is an allowance for
12 that. There was also an allowance for an upset
13 in the treatment process or the intentional act
14 of a third party and, and the exceptions the
15 Board can consider the exceptions, if they
16 apply, but I would caution the Board that there
17 has to be a legal basis for the applicability of
18 the exemption. third, the permit that was
19 written for this discharger, as with all
20 dischargers, is based on their submission of a
21 report of waste discharge, so the Board can't
22 necessarily fabricate conditions unless there's
23 a reasonable nexus with the report of waste
24 discharge that's been submitted, and the Board,
25

1 I think is, um can assume a certain knowledge
2 of what effluent constituents would be in the
3 discharge because they submitted, and also, that
4 the changes to the permit. the addition to
5 make a time schedule order or cease and - -
6 order retroactive I think is I would recommend
7 that that not be considered. I don't think
8 that's appropriate or legal. Fourth, the
9 question by Mr. Loveland about the outfall, the
10 joint use of an outfall, we're increasingly
11 seeing brine discharges wanting to be
12 discharged dischargers wanting to have brine
13 discharged to the ocean. The convenience of an
14 existing o--ocean outfall is the obvious you
15 know, way to get rid of it, but if--so far, this
16 Board, when you put brine into an ocean outfall,
17 we have individual permits, so that if there is
18 an exceedance in the coming led effluent, the,
19 the, the al--the alternative would be to have
20 mandatory minimum penalties against everybody
21 who uses the outfall and that's not, not
22 workable, so I just wanted to clarify that. the
23 fifth point I would make is that there have been
24 some comments about I interpret them as
25

1 suggestions that the Board should have special
2 considerations for discharges of effluent that
3 come from recycled water projects, and this
4 Board has I think worked extensively to ensure
5 that there are waste discharging requirements
6 available for the discharge of water quality
7 that meets the standards for, for reuse, but
8 there are no exemptions or exceptions for the
9 discharge of the waste that's produced.
10 Wastewater is wastewater and if it's discharged
11 as surface water, then there are surface water
12 standards that must be met, so generating
13 wastewater that goes into an ocean outfall from
14 a recycling project shouldn't have any precedent
15 over wastewater that comes from a sanitary
16 sewage system. sixth the Board can look at
17 whether a violation occurred, but the, the, the
18 problem with the items that have before this
19 Board today, I believe these violations have
20 been submitted to this Board, under penalty of
21 perjury, by the discharger and the, the
22 enforcement team can validate that. So once
23 they report their violations, which is required
24 in the permit, how does this Board, then, say
25

1 that the violation didn't occur? That's the
2 dilemma. And my seventh point is that and I'm
3 somewhat reluctant to say this, but for, for
4 matters of policy on MMPs Regional Boards have
5 had items petitioned to the State Board. They-
6 -all dischargers always have the recourse of
7 petitioning a decision, so if the Board's in un-
8 -you know, a position where you feel that you,
9 you can't do anything, other than approve the
10 mandatory minimum penalty there is always the
11 option for the discharger to petition this
12 matter to the State Board. And the, the last
13 thing I'll say is that we will--we will work
14 with the discharger and bring to the Board a
15 time schedule order that's appropriate provided
16 we, we get the input from them, and that will
17 take some time. Are there any questions?

18 MR. WRIGHT: Any questions of Mr. Robertus?

19 MR. ROBERTUS: Thank you.

20 MR. WRIGHT: Mr. Thompson how are you doing
21 on your reading of the--

22 MR. THOMPSON: [Interposing] Just about
23 done.

24 MS. OKAMOTO: Chair, if I could, I - - help

1 Mr. Thompson out and point him in the right
2 area. The discussion of legislative purpose and
3 history in the City of Brentwood case is located
4 on page nine under section two. And I apologize
5 if your copies are marked out because my copies
6 were marked out, so.
7

8 [Long pause]

9 MR. WRIGHT: Okay. Unless I hear otherwise
10 I'm going to close the hearing, so. Okay.
11 Well, Mr. Haas?

12 MR. HAAS: Yeah, one, one, one, one
13 procedural matter to clarify, and I apologize
14 for this, this mistake. The Revised Tentative
15 Order supplemental--in the supplemental package
16 as supporting document six is a red line version
17 of the original Tentative Order; however, I
18 failed to include another copy of the
19 attachment, the table one, which has a table of
20 violation which is in the original Tentative
21 Order. It is unchanged so as you consider
22 adoption of the Tentative Order, R9-2009-48,
23 please consider the table one as part of that,
24 which you'll find as table one to the Tentative
25 Order in the original mailing.

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MR. WRIGHT: Okay. Mr. Robertus?

MR. ROBERTUS: Oh, one item I'd like to point out is that there is a SEP, I believe, in the - - order.

MR. WRIGHT: yeah.

MR. ROBERTUS: And no speaker has addressed-

MR. WRIGHT: [Interposing] Oh, it was my attention to get to that as part of our discussion. So I--yeah, I think we can close the hearing, and then although, do you think that there may be some questions of--

MR. ROBERTUS: [Interposing] Well, I, I want to make sure that the, the Board the, the Board understands that you can't impose a SEP against the will of the discharger.

MR. WRIGHT: You can or you can't?

MR. ROBERTUS: You cannot.

MR. WRIGHT: You cannot.

MR. ROBERTUS: The, the discharger must be willing to participate in, in the SEP and accept the responsibilities for completion.

MR. WRIGHT: Okay. Before we close the hearing, then we have a proposal. We have two

1
2 SEPs proposed, one of which is recommended by
3 staff. Mr. Destache, did you care to comment
4 on, on those? I know you--you're pretty
5 familiar with--

6 MR. DESTACHE: [Interposing] Yeah..

7 MR. WRIGHT: --the situation, so.

8 MR. DESTACHE: And I would I, I do
9 appreciate staff's recommendation of the SEP
10 with the Bite 0--or the '08 Bite, is that how
11 it's described, Jeremy, or the Bite '08?

12 MR. HAAS: Right, the Bite '08 Rocky Reef
13 Study.

14 MR. DESTACHE: Right, right. And the, the
15 other SEP, I think, is would be unacceptable,
16 simply because it's a SEP that would be run by
17 the discharger, which I think we can shy away
18 from those SEPs, so I think the, the Bite '08
19 Rocky Reef is a--is a good way to go if the
20 discharger is willing to, um accept that.

21 MR. WRIGHT: Okay. Let's hear from the
22 discharger regarding the SEPs.

23 MS. CHEN: I can just make a, a comment
24 about it.

25 MR. WRIGHT: Please, Ms. Chen.

1
2 MS. CHEN: We, we presented those two
3 options, and we were leaving it to the
4 discretion of the Board to determine which one
5 was more appropriate, so the '08 Bite SEP w--
6 would be--would be fine with us, only to the
7 extent that we don't want to waive our right to
8 appeal this to the State Board.

9 MR. WRIGHT: Okay, understood. Anything
10 else on the any questions to the Orange County
11 folks regarding SEPs? Okay. Um--

12 MS. CHEN: [Interposing] and can I address
13 this?

14 MR. WRIGHT: Oh, yes, please, go ahead.

15 MS. CHEN: I'm so sorry. I, I wanted to
16 address just one point that Mr. Robertus--Ro--
17 Robertus made, and he, he had mentioned that
18 the, the Board has extensive experience dealing
19 with this type of facility and that brine
20 effluent, they--they're well familiar with it,
21 and we would like to just point out that, you
22 know, as I said in my presentation, in the
23 Oceanside, the Brackish Groundwater Facility,
24 they, they were treated differently, so I just
25 want to point that out.

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MR. WRIGHT: Okay. Thank you for that clarification. Okay let's close the hearing and proceed to some discussion. Mr. Anderson?

MR. ERIC ANDERSON: Yeah. Actually, I had a question for Jeremy real quick before you close the hearing, and there was -- why didn't the startup exemption--

MR. WRIGHT: [Interposing] Okay. The hearing is not closed.

MR. ANDERSON: --oh, thank you. Why didn't the startup exemption not apply to this facility?

MR. HAAS: the statute in 13385 J3, and, Myumi will correct me if I'm wrong lays out some certain conditions that need to be met by a discharger who is seeking a startup period exemption and these things include notifying the Board during the startup period that there's going to be this defined time by which they're going to get things correct and further limits it to 30 days or, or longer, if there's biological treatment involved. And none of those conditions were met in this case by South Coast or, or SOCWA.

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MR. ANDERSON: Okay. Thank you.

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MR. WRIGHT: Okay, thanks. Thank you,

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Jeremy. Ms. Chen, and then, Ms. Okamoto, and

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then, I'm going to close the hearing.

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MS. CHEN: I just want to address that, that

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ex--the exemption, it only relates to POTWs, so

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what you're dealing with are POTWs and there's

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30 days startup for POTWs, and then, if they

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have biological treatment, it's 90 days, so it

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wouldn't apply to us anyway. Our argument is

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that, you know, given the spirit and intent of

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that exception and, and the way the MMPs work,

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we ought to have some carve out.

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MR. WRIGHT: Thank you. Ms. Okamoto,

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anything?

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MS. OKAMOTO: No.

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MR. WRIGHT: Thank you. All right. The

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hearing is closed. Discussion Mr. Thompson,

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you've had a chance to--

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MR. THOMPSON: [Interposing] - - moment.

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MR. WRIGHT: Okay. [Laughs]. Okay. And

23

George, did you want to add to where you were

24

going before?

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MR. LOVELAND: Well, not much, but I am

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2 disturbed by this. I understand the, the lack
3 of discretion, and, and I appreciate what
4 Director Rober--or Executive Officer has, has
5 said about the legislature's intent not to let
6 the Regional Boards get too wishy-washy with
7 this thing, but, but I do have a concern - -
8 and, and it's, it's outside of what I think,
9 ultimately, the motion will have to be on this,
10 and, and, maybe it does need to go to the State
11 Board, but the solution that we have now of
12 adding the brine to the POTW, which is producing
13 recycled water and raising that TDS seems like
14 the wrong way to do it. And yet, if we're--if
15 we're discharging the combined effluent that
16 meets the requirements, which seems we'll kill a
17 couple of birds with a rock, by, by allowing
18 that, and I'm not sure why we aren't thinking of
19 that in the big picture, and there may be some
20 good reason, and at some point, I'd like to--I'd
21 like to have that discussion. I, I--I'm
22 frustrated by the fact that our hands are tied,
23 tied on this without looking at a bigger picture
24 and when Mr. Robertus, I thought, made a very
25 good argument, I, I, I disagree with one part,

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you know, you got to--if we monitored every discharger at the point of discharge, and then, also monitored the combined discharge, and if the combined discharge doesn't exceed our, our requirements, or violate our requirements, I don't see why we wouldn't give this thing further discretion to work with the individual dischargers within that combined outfall to try and accomplish a larger goal, and I think there's some work there that maybe needs to be chewed on a little bit.

MR. WRIGHT: Yeah, and I, I guess there's, there's a need to have some, some discussion on that. you know, you've got two different philosophies operating you know, source control and monitoring, versus outfall control and monitoring, and--but maybe we can have that discussion in a future board meeting, so perhaps that--that's another agenda item, so Chris, anything?

CHRIS: No, I was just going to comment. I feel frustrated, too. I think it's, it's pretty evident what we have to do with the issues that are in front of us, but it is--it's

1 not something I feel good doing. I think it's,
2 it's kind of contrary to, to maybe some of the
3 policy that, that we do want to see put in
4 place and follow, but...

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6 MR. WRIGHT: Mr. Destache?

7 MR. DESTACHE: yeah. I also am a little bit
8 frustrated with the--with where we sit today,
9 although we have to deal with the policies that
10 we have in place, and we need to--we need to
11 move forward and I think the little Hoover
12 Commission said it best when they said that we
13 should be talking about policy and not permits,
14 and let staff and our executive officers, and
15 this is globally on a regional board basis,
16 that, that we should be dealing with policy. I
17 think this is one policy issue that we really
18 need to look at because we are not going to see
19 a diminishing amount of these types of actions,
20 and this--these types of facilities. They're
21 just going to increase, and we got to--have--we
22 have to get to a point where we're better, our,
23 our policies are better suited for this type of
24 facility, and I, I feel for SOCWA, but the
25 reality is, is that, um that we are where we

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2 are, with the legislation today, but I, I do
3 mean to make it a point to, to push this and,
4 and to a point where we can clarify where we go
5 with these groundwater recovery facilities, the
6 recycling facilities, and they--how they affect
7 PTL and we may have to split off some of this
8 policy issue with on the recycling side.

9 MR. WRIGHT: - - but it sounds like it's the
10 kind of discussion that, that we not only need
11 to have at, at the board level, but also,
12 statewide, and so you know, I can communicate
13 that up through the chairs conference calls, but
14 it's, it's probably something that we could put
15 on an agenda for the statewide meeting of the of
16 the Members of the Board. I think we have a
17 meeting coming up in October, so I'll suggest
18 that as an agenda item, so. Eric?

19 MR. DESTACHE: - - ashamed to, to lose, not
20 only the 17,000 acre feet but the other
21 applications in the future that have difficulty
22 with, with the MMP statute th--that, that that
23 flexibility and discretion is an important
24 thing, and, and, and it, it is frustrating not
25 to be able to, to use discretion, especially for

1 something that, that is in this case, and I, I
2 apologize, but I don't--I do feel like we don't
3 have that discretion in this case although you
4 made a good case.
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6 MR. WRIGHT: Eric, anything?

7 MR. ANDERSON: Yeah. You know I think we do
8 have some room for here--for interpretation
9 here. I'm not totally convinced that these
10 MMPs apply, and I, I think it's, it's a shame
11 that we--we're going to probably penalize some
12 a water district who's trying to do the right
13 thing here, and I just think that you know, we
14 need to consider this before we take this action
15 today, so.

16 MR. WRIGHT: David, anything?

17 MR. KING: I, I also feel like Mr. -- I
18 haven't really had the issues--the, the
19 application of the law to the fact set forth
20 clearly enough to know, 100% that, that I'm--my
21 discretion--that, that--or that these particular
22 violations are absolutely subject to mandatory
23 minimums and looking to other indications in
24 this record here, such as the, the motion to
25 strike reflects an absence of the use of

1. discretion about your use of resources and an
2. absence of discretion about the prosecution--
3. pro--prosecutorial discretion. I would say that
4. this was not a wise use of Ms. Mo--Okamoto's
5. time, Ms. Chen's time, or Ms. Hagan's time, to
6. have to deal with something like a motion to
7. strike. That being said, - - applaud the
8. criticism across the Board here. If, if there
9. was a, a rational argument for not applying
10. mandatory minimum penalties to certain
11. violations, we see people come in and, and
12. prepare the numbers and show which violations
13. should not be subject to penalties, what--how
14. much the penalties should be. When we're
15. talking about strict statutory application, we,
16. we don't have equitable consideration. We have
17. law to apply - - not in equity. so, I, I--I'm
18. not 100% convinced that the case has been made
19. very strongly applying the law to the facts,
20. and wouldn't be opposed to continuing this and
21. seeing if either we could have this back on the
22. calendar later or if the parties could work out
23. an appropriate resolution.
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25. MR. WRIGHT: Mr. Thompson?